

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

TROY SEALE)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 2005-00011
)	
JESSAMINE-SOUTH ELKHORN)	
WATER DISTRICT)	
)	
DEFENDANT)	

ORDER TO SATISFY OR ANSWER

Jessamine-South Elkhorn Water District ("Jessamine-South Elkhorn") is hereby notified that it has been named as defendant in a formal complaint filed on January 4, 2005, a copy of which is attached hereto.

Pursuant to 807 KAR 5:001, Section 12, Jessamine-South Elkhorn is HEREBY ORDERED to satisfy the matters complained of or file a written answer to the complaint within 10 days from the date of service of this Order.

Should documents of any kind be filed with the Commission in the course of this proceeding, the documents shall also be served on all parties of record.

Done at Frankfort, Kentucky, this 12th day of January, 2005.

By the Commission

ATTEST:


Executive Director

DAVID RUSSELL MARSHALL
ATTORNEY AT LAW

gs

109 COURT ROW
NICHOLASVILLE, KENTUCKY 40356

TELEPHONE: (859) 885-3192
FAX: (859) 887-1557

December 28, 2004

Commonwealth of Kentucky
Environmental and Public Protection Cabinet
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602-0615
Attention: Ms. Ginny Smith, Director
Division of Consumer Services

RECEIVED

JAN 04 2005

PSC Consumer Services

RECEIVED

JAN 04 2005

**PUBLIC SERVICE
COMMISSION**

RE: Troy Seale

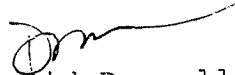
CASE 2005-00011

Dear Ms. Smith:

Please file the enclosed formal complaint relative to my client Troy Seale. If you have any questions or wish to discuss this matter further, please feel free to contact me. Thank you in advance for your assistance herein.

With kindest regards, I remain

Very truly yours,



David Russell Marshall

DRM/shm

letters\troy seale-complaint.ltrshm

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JAN 04 2005

PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the matter of:

TROY SEALE
(Your Full Name)
COMPLAINANT
VS.
JESSAMINE-SOUTH ELKHORN WATER DISTRICT
(Name of Utility)
DEFENDANT

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JAN 04 2005

PSC Consumer Services

COMPLAINT

The complaint of TROY SEALE
(Your Full Name) respectfully shows:

- (a) TROY SEALE
(Your Full Name)
P. O. BOX 156, KEENE, KY 40339
(Your Address)
- (b) JESSAMINE-SOUTH ELKHORN WATER DISTRICT
(Name of Utility)
P. O. BOX 731, NICHOLASVILLE, KY 40356
(Address of Utility)
- (c) That: SEE ATTACHED
(Describe here, attaching additional sheets if necessary,

the specific act, fully and clearly, or facts that are the reason

and basis for the complaint.)

Continued on Next Page

Formal Complaint

TROY SEALE vs. JESSAMINE-SOUTH ELKHORN WATER DISTRICT

Page 2 of 2

SEE ATTACHED

Wherefore, complainant asks SEE ATTACHED
(Specifically state the relief desired.)

Dated at Nicholasville, Kentucky, this 28th day
(Your City)

of December, 2004.
(Month)

Troy H. Seale David Russell Marshall
(Your Signature)
DAVID RUSSELL MARSHALL
109 COURT ROW
(Name and address of attorney, if any)
NICHOLASVILLE, KY 40356

Complainant, Troy Seale, is the owner and operator of a thoroughbred horse farm located on the Keene Troy Pike in Jessamine County, Kentucky.

The Jessamine-South Elkhorn Water District, in a very heavy handed and oppressive fashion, is threatening to terminate the Complainant's water service as a consequence of damage done to the utility's underground water line by a fencing contractor. The relevant facts are set forth as follows:

During the summer of 2004, the Complainant hired a fencing contractor to replace existing plank fencing located on the front of his horse farm. However, the Complainant would not allow the fencing contractor to commence work until a representative of the utility company had been contacted and agreed to inspect and mark the location of the underground water pipe running along the front of the Complainant's property. This was necessary to insure that the fencing contractor did not damage the water line while replacing the existing plank fence.

After the request for inspection and marking of the water line was made, Mr. Seale and his fencing contractor were made to wait a number of weeks until the utility company saw fit to come to Mr. Seale's farm and locate and mark the water line. Mr. Seale was out of town and was not present when the utility company finally inspected and marked the location of its water line. When this process was finally accomplished, the fencing contractor immediately undertook to replace several fence posts in an area removed from where the utility company had marked the location of its water line. As luck would have it, the fencing contractor damaged the utility's water line while driving the first of several posts into the ground. Obviously, the water district was mistaken as to the location and marking of its water line, and the damage was done despite the very best efforts of Mr. Seale and the fencing contractor to avoid such an occurrence.

Now, well after the fact, the utility company has threatened to terminate Mr. Seale's water service if he does not pay for the required repairs to the water line at a cost of \$1,409.00 on or before December 31, 2004.

In support of its position, the utility company argues that paragraph #23 of its Rules and Regulations permits it to terminate Mr. Seale's water service as threatened. However, Mr. Seale was not a party to the adoption of these rules and regulations, and he was not given any notice of same which would comply with basic due process principles. Moreover, it should be noted that Mr. Seale did not damage the utility company's water works. As indicated above, Mr. Seale was out of town on the day

the water line was damaged, and he in no way caused or occasioned the damage by his negligence. Accordingly, and pursuant to the third section of paragraph #23 of the utility's rules and regulations, the damage to the water line must be borne by the "other individual" responsible for the damage and not Mr. Seale. The other individual responsible for the damage would be the representative of the water company who incorrectly located and marked the water line.

It should also be noted and taken into consideration that Mr. Seale is in the business of raising and selling cattle and expensive thoroughbred race horses. The welfare of Mr. Seale's livestock would be severely jeopardized by the termination of his water service.

WHEREFORE, the Complainant asks that the utility company be directed not to terminate Mr. Seale's water service. Instead the utility should be directed to accept responsibility for its negligence which was the direct and proximate cause of the water line damage.

complain\troy seale2.comshn